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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1061

W. T. GRANT COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

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Of Counsel
DAVID SACHS

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Respondent opposes the petition on the ground that, under valid Regulations of the Treasury Department, the decision below is correct. For reasons stated on pages 17-18 of our petition, we believe the decision below was not correct.

As to the points made in respondent's brief, in the same order:

1. The Circuit Court was in error in considering that petitioner's Coupon Book Installment Plan, providing for purchase of a limited aggregate dollar amount of merchandise to be paid for in installments, does not qualify under the first definition in the Regulations of a "sale on

the installment plan" (Reg. §1.453-2(b)(1)). The Tax Court held such a plan comes within a reasonable interpretation of this Regulation. For reasons stated in our petition, we believe this conclusion is completely justified. To hold otherwise would defeat the purpose of the law.

2. Respondent argues that the Circuit Court was correct in its position that, in order to report on the installment basis the taxpayer was required to keep records such as are called for under the Regulations *with respect to revolving credit plans*. The Coupon Book Installment Plan, for a limited dollar amount of credit, is not a revolving credit plan, but, for this purpose, is indistinguishable from an ordinary installment credit transaction (petitioner's so-called Special Purchase Installment Plan). It was erroneous for the Circuit Court to say that petitioner must qualify under Regulations stated by their terms to be applicable to revolving credit plans (Treas. Reg. §1.453-2(d)(1)).

3. Respondent's final point seems to be that, since the Internal Revenue Service apparently has not yet proceeded against other taxpayers who sell merchandise by the use of coupons or certificates paid for in installments, perhaps, unlike petitioner, they are maintaining "accounting records in such a manner as to enable an accurate computation to be made . . . in accordance with" the record keeping requirements of the Regulations applicable to revolving credit plans.

This cannot be so, because, as pointed out in our petition (pp. 13, 16), it would be prohibitively expensive, and perhaps administratively impossible, to keep records which would establish that no merchandise was acquired with a

coupon or coupons for a price less than the monthly installment payment for the coupon book, made subsequent to the purchase and in the same month as the purchase.

The only reply made by respondent to petitioner's contentions as to the major importance of the issue (which, we submit, for present purposes is what is determinative) is in footnote 5, page 7, where it is said the Internal Revenue Service has advised that "no cases are presently pending involving the question either in the courts or administratively." If it is true that, thus far, other cases have not yet been processed as this taxpayer's case has been, we submit it is irrelevant. Surely, it may be assumed that, if the Circuit Court decision is allowed to stand, the Internal Revenue Service will apply it uniformly to all taxpayers similarly situated.

Respectfully submitted,

A. CHAUNCEY NEWLIN,
Counsel for Petitioner

Of Counsel:
DAVID SACHS

March 19, 1974